

# **City of Asheville North Carolina**



**REQUEST FOR INFORMAL BIDS AND PROPOSALS  
BID REQUEST NO. FBR 772-10**

**LIGHTING UPGRADE FOR CITY HALL  
THROUGH THE CITY OF ASHEVILLE  
OFFICE OF SUSTAINABILITY**

**THIS PROJECT IS FUNDED UNDER THE AMERICAN RECOVERY  
AND REINVESTMENT ACT OF 2009**

**BID OPENING DATE: JUNE 23, 2010  
AT 3:00 PM LOCAL TIME**

**ISSUED BY: CITY OF ASHEVILLE PURCHASING DIVISION  
P. O. BOX 7148  
ASHEVILLE, NC 28802  
PHONE: (828) 259-5950  
AMY PATTERSON, PURCHASING MANAGER**

**BIDS ARE TO BE SEALED AND MAILED TO THE ABOVE POST OFFICE BOX  
OR DELIVERED TO THE PURCHASING DIVISION OFFICE LOCATED  
AT NO. 3 HUNT HILL PLACE, ASHEVILLE, NC 28801**

## CITY OF ASHEVILLE, NORTH CAROLINA

## PURCHASING DIVISION

REQUEST FOR QUOTATION NO. FBR 772-10

Date: June 11, 2010

**REQUEST FOR QUOTATION ON  
LIGHTING UPGRADE FOR CITY HALL  
THROUGH THE CITY OF ASHEVILLE  
OFFICE OF SUSTAINABILITY**

Pursuant to General Statutes of North Carolina, Section 143-129, as amended, sealed bids and proposals, subject to the conditions and specifications herein, are invited for furnishing the following equipment, materials, services or repair work. **All bids will be received by the City of Asheville Purchasing Division until 3:00 p.m. on WEDNESDAY, JUNE 23, 2010 at which time they will be publicly opened and read.**

TERMS: Net 30 Days  
DELIVERY: ASAP - Bidder Specify Best Delivery  
FOB: Destination – Asheville, North Carolina

CITY OF ASHEVILLE, N. C.  
Amy Patterson, Purchasing Manager

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**POSITIVELY NO BIDS CONSIDERED UNLESS SUBMITTED ON THIS FORM**

NOTICE TO BIDDERS: All tax imposed upon any article on which you are bidding shall be shown as separate items and in no case included with price bid. Failure to comply with these conditions will be considered grounds for rejection.

		<p><b>LIGHTING UPGRADE FOR CITY HALL PER SPECIFICATIONS (PDF) AND BID PAGES (EXCEL SPREADSHEET) WHICH ARE PART OF THIS BID PACKAGE.</b></p> <p><b>LIGHT FIXTURES OF EACH TYPE SHALL BE COMPATIBLE WITH THE BALLAST DETAILED IN THE "BALLAST" COLUMN OF THE SPECIFICATIONS, REGARDLESS OF FIXTURE CATALOG NUMBER LISTED IN THE SPECIFICATION SHEET.</b></p> <p><b>BIDDERS NOTE:</b></p> <p><b>BID SHOULD BE SUBMITTED INCLUSIVE OF SHIPPING/FREIGHT COSTS – FOB ASHEVILLE, NC. ADDITIONAL FREIGHT CHARGES WILL NOT BE ALLOWED.</b></p>			
Company Name		Bid Submitted By (Signature)			
Address		Printed Name and Title			
City State Zip		Email Address			
Telephone No.		Fax No.			
Web Address		Federal Taxpayer ID No.			
Delivery _____ calendar days after receipt of order		Payment Terms: Net _____ Discount: _____ % Net _____			

GENERAL CONDITIONS

1. All bids and proposals shall be for furnishing apparatus, supplies, materials, equipment and/or work and services in accordance with the applicable plans and specifications prescribed by The City of Asheville. From the date shown until the date of opening the proposals, the plans and specification of one proposed work and/or a complete, description of the apparatus, supplies, materials or equipment and/or work and services are and will continue to be on file in the Purchasing Office for City of Asheville, Asheville, N. C., during usual office hours, and available to prospective bidders.
2. The City reserves the right to evaluate all bids especially where there is a wide range in specifications or to reject any and all bids and proposals, and further specifically reserves the right to make the award and/or awards in the best interest of the City of Asheville.
3. Time, in connection with discount offered, will be computed from date of delivery of the supplies or materials on delivery at destination when final inspection and acceptance are at those points, or from date correct invoice is received if latter is later than the date of delivery. Guaranteed maximum price must be shown in all bids.
4. In case of default of the contractor, the City may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.
5. Payment by City due thirty days after delivery in Asheville and inspection unless otherwise specifically provided, subject to any discounts allowed.

**BID**

In compliance with the above request for bids, and subject to all the conditions thereof, the undersigned offers and agrees, if this bid be accepted within 60 days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, and unless otherwise specified, within \_\_\_\_\_ days after receipt of order, deliver F.O.B. Asheville, NC. Discounts will be allowed for prompt payments as follows: 10 calendar day, \_\_\_\_\_ per cent; 15 calendar days, \_\_\_\_\_ per cent; 20 calendar days, \_\_\_\_\_ per cent; 30 calendar days \_\_\_\_\_ percent.

Bidder: \_\_\_\_\_ Address: \_\_\_\_\_ Zip: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Authorized to sign bids)

Telephone Number: \_\_\_\_\_ Date: \_\_\_\_\_

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MAILING INSTRUCTIONS

1. Bidder to submit a complete, fully executed bid document.
2. If mailed, bid should be forwarded by certified U. S. Postal Service. Please address and mark your bid as shown below.

CITY OF ASHEVILLE, N. C.  
PURCHASING DIVISION  
P. O. BOX 7148  
ASHEVILLE, N. C. 28802  
FORMAL BID REQUEST NO. 772-10  
LIGHTING UPGRADE FOR CITY HALL  
TO BE OPENED 3:00 P.M. LOCAL TIME  
WEDNESDAY, JUNE 23, 2010

3. If forwarded other than by U.S. Postal Service, delivery must be made directly to City of Asheville, Purchasing Division, No. 3 Hunt Hill Place, Asheville, North Carolina 28801.

**NOTE: IF MAIL OR DELIVERY BY ANY OTHER MEANS IS DELAYED BEYOND THE DATE AND HOUR SET FOR BID OPENING, PROPOSAL THUS DELAYED WILL NOT BE CONSIDERED.**

**CITY OF ASHEVILLE, NORTH CAROLINA  
OFFICE OF SUSTAINABILITY**

**Formal Bid Request No. 772-10**

**Materials for Lighting Fixtures and Related Equipment  
For  
Asheville, NC City Hall**

The U.S. Department of Energy, as part of the American Recovery and Reinvestment Act (ARRA) has granted funds to the City of Asheville, North Carolina, for energy retrofit work to be performed at several city-owned facilities in Asheville, N.C. Increased energy efficiency, reduced energy consumption and reduced energy costs through efficiency improvements in building is a high priority in this project in addition to job creation and increased productivity to spur economic growth and community development.

The Bid Request includes two Bid Packages:

Package 1: New

Package 2: Retrofit

Bidder shall provide a bid for each package separately using the attached bid forms. **Bidders are to submit the “Bid Response Worksheet”, which is an Excel document, on a disk with their bid response.** Bids submitted without the Worksheet on disk may be considered non-responsive.

The City of Asheville may choose to purchase the bid package based on its evaluation of the offer most beneficial to the City.

### Proposal Conditions

Successful vendor shall be required to perform the following services in addition to providing materials specified in this request:

1. Coordinate with the installation contractor and manage the delivery of materials to the site to assure availability of materials as needed for installation based on the established work schedule for the installation activities.
2. Provide a storage trailer for on-site storage of the materials ordered under this Bid Request. Location for the storage trailer will be provided by the City of Asheville.
3. Successful vendor shall assume responsibility for materials until the time of installation by the installation contractor.
4. As an option of the bid, successful bidder shall include a cost to recycle materials removed from City Hall in the course of the installation of new fixtures and controls. This material includes all removed light fixtures, ballasts, and other recyclable materials. **Fluorescent lamps are expressly excluded from the recycling option. (City assumes responsibility for recycling of lamps.)**
5. Buy American:  
Components of manufactured goods  
No requirement is extended with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States
6. All lamps and ballasts must appear on the Consortium for Energy Efficiency approved lists: <http://www.cee1.org/com/com-lt-main.php3> and [http://.cee1.org/Qualifying\\_lamps\\_120-and\\_277-volt\\_ballasts](http://.cee1.org/Qualifying_lamps_120-and_277-volt_ballasts).
7. All lamps and ballasts must meet the minimum Progress Energy Incentive Requirements of at least 89.6 mean lumens per input watt. Formula for calculation of mean lumens per input watt is: (number of lamps) x (ballast factor) x (mean lumens) / input watts.
8. Lamps and ballasts shall be manufactured by the same manufacturer.
9. All fluorescent lamps, except Hi bay lamps, to be high performance T8 32W lamps.
10. High bay lamps to be T5 high performance lamps.
11. All prices quoted for either retrofit of fixtures or new fixtures shall include lamps and ballasts. See attached sheets for specifications of products.
12. Proposer shall include a unit price for all items. Unit price shall serve as the basis for any additions or deletions of materials from the quantities listed in this bid request.
13. Proposer shall provide cut sheets for all proposed materials. Cut sheets shall provide details of materials sufficient to allow a complete evaluation of the proposed materials.

## **GENERAL CONDITIONS AND REQUIREMENTS**

### **1. General Conditions**

A. This Agreement embodies all the representations, rights, duties, and obligations of the parties. Any prior oral or written agreement not embodied herein shall not be binding upon or endure to the benefit of any of the parties.

B. The work shall be conducted so as to minimize inconvenience to the City. Access as required by the City to the facility shall be maintained throughout construction unless prior written approval is otherwise obtained in advance. The Contractor shall provide signs, barricades, and warning devices to ensure safe passage for both vehicular and pedestrian traffic at all times.

C. The Contractor shall make necessary provisions to protect the surrounding area and shall be responsible for full restoration of any damages and/or costs of restoration to the construction site.

D. The Contractor shall make necessary provisions to protect structures and property from any and all damage arising out of, relating to, or resulting from this work. Also, all debris, rubbish or waste materials shall be removed from the site by the Contractor and at the Contractor's expense.

E. Contractors shall obtain any applicable license and/or permits prior to the start of construction and shall notify the necessary inspectors at the proper times during construction.

F. The Contractor shall at all times keep the premises free from accumulations of waste materials or rubbish caused by his employees at work; and at the completion of the work, he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave the premises "broom clean" or its equivalent. It is further agreed that all materials and equipment that have been removed and replaced as a part of the work hereunder shall belong to the Contractor, unless otherwise specified.

2. Warranties and Guarantees: All material is to be warranted and guaranteed against defects for a period of one (1) year. Any and all manufacturers' warranties shall be assigned to the City.

3. Bid Evaluation: The City reserves the right to evaluate all bids especially where there is a wide range in specifications or to reject any and all bids and proposals, and further specifically reserves the right to make the award and/or awards in the best interest of the City of Asheville.

## SPECIAL TERMS AND CONDITIONS

1. **DETAILED SPECIFICATIONS:** Detailed specifications for this equipment are included as an attachment with the bid request. Bids to be submitted in accordance with the attached specifications and these Special Terms and Conditions. All things not expressly stated in the attached specifications, General Conditions or Special Terms and Conditions but involved in carrying them out must be included in bidder's proposal as though they were specifically stated.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and General Contract Terms and Conditions. The City of Asheville objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any response appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of a proposal, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect. It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
3. **ISSUING OFFICE:** This bid request is issued by the City of Asheville Purchasing Division on behalf of the Office of Sustainability. All correspondence and inquiry should be faxed to Amy Patterson, Purchasing Manager at (828) 259-5440.
4. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be faxed to Amy Patterson, Purchasing Manager at (828) 259-5440. Technical inquiries may be directed to Linda Fowler, Office of Sustainability at [lfowler@ashevillenc.gov](mailto:lfowler@ashevillenc.gov).

Any and all revisions to this document shall be made only by written addendum from the City of Asheville Purchasing Division. **Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for bids and proposals.** The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from any source are of no effect.

In the event that changes to the bid are required, the City of Asheville will issue an addendum to the bid and, if necessary, postpone the scheduled opening of bids so as to provide at least seven (7) days notification to bidders prior to the bid opening. Any changes will be transmitted to original prospective bidders via addendum; however **it is the bidders' responsibility** to check the City's webpage prior to submitting their bid for any addenda that may have been issued. Bidders may access the City's website for addenda at <http://www.ashevillenc.gov/business/subpage.aspx?id=534>. Bids submitted without all signed addenda may be considered non-responsive.

5. **COMPLIANCE WITH RULES AND REGULATIONS:** The equipment furnished must comply with all applicable provisions of the American Recovery and Reinvestment Act of 2009.

6. **GENERAL REQUIREMENTS:** The equipment furnished shall be new and unused and the manufacturer's latest listed and published stock model, or models which meet all the applicable requirements of these specifications.
7. **NONCONFORMING TERMS AND CONDITIONS:** A bid response that includes terms and conditions that do not conform to the terms and conditions in this bid document is subject to rejection as nonresponsive. The City of Asheville reserves the right to permit the bidder/vendor to withdraw nonconforming terms and conditions from its bid response prior to a determination by the City of Asheville of non-responsiveness.
8. The City of Asheville reserves the right to postpone bid openings for its own convenience.
9. **BIDDERS SUBMITTALS:** Bidder must furnish all information requested herein including descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection. All documents submitted should bear the name of the bidder.
10. **EXPENSES INCURRED IN PREPARING BID:** The City of Asheville accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.
11. **CONTRACT/AWARD:** Pursuant to the laws governing public contracts in North Carolina, the successful bidder's/vendor's response to this Request for Bids and Proposals and any addenda thereto, plus the City's issuance of a City of Asheville Purchase Order for the proposed goods shall constitute a binding contract.
12. **INDEMNIFICATION:** The bidder/vendor covenants to save, defend, keep harmless, and indemnify the City of Asheville and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties and cost - including court costs and attorney's fees, charges, liability, and exposure, however, caused resulting from, arising out of, or in any way connected with the bidder's/vendor's negligent performance or nonperformance of the terms of the contract.
13. **ASSIGNMENT:** During the performance of the contract, the bidder/vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, without the prior written consent of the City of Asheville.
14. **VENDOR APPLICATION AND LICENSES:**

**\*Vendor Application:** Bidders may complete a City of Asheville Vendor Application and return it with bid response. Bidders may download the form from the City's website at the following link: [www.ashevillenc.gov](http://www.ashevillenc.gov). Look under the **BUSINESS** tab, select "Doing Business with the City" and select "Vendor Application" from the list of options. Directions for submittal are available on this page.



**\*Business Privilege License:** All vendors doing business with the city must have a business privilege license. Please include a copy of your license with the bid. If you do not have one, download the form from the same web page under "Doing Business in the City" and submit to the Accounting Division. Please include a copy of your application with the bid.

**\*NC Certificate of Authority:** All out of state vendors submit a copy of your certificate with your bid or register with the State of NC at <http://www.secretary.state.nc.us/Corporations/Forms.aspx?EntityId=2719996&Type=Nonprofit%20Corporation> and submit a copy once received.

15. The bidder shall be responsible for seeing that any and all laws of the State of North Carolina concerning certificate of origin, title, transit or transportation documents, et al, are complied with in all respects.
16. **WARRANTY:** Bidder to include the warranty provisions as outlined in bid specifications.
17. **TAX EXEMPTIONS:** The City of Asheville is exempt from Federal Excise Tax but not from State and Local Sales Tax. Sales tax should not be included in bid prices, but may be added as separate line items on the invoice.
18. **SUBMITTALS:** Bidders to submit one (1) **original bid package and four (4) complete copies.**
19. **INSURANCE REQUIREMENTS:** The successful bidder shall, during the performance of the contract keep in force at least the following minimum limits of commercial general liability insurance:
  - a. Commercial General Liability: \$500,000 (Products and Completed Operations)
  - b. Employers Liability: 100/500/100
  - c. Workers Compensation: Statutory
  - d. Automobile Liability: \$500,000

Liability Coverage shall be written on a Commercial General Liability form and must include finished products/completed operations. The policy shall be written on an occurrence form and shall include Contractual Liability coverage.

The required limits can be provided by one or more policies provided all other insurance requirements are met.

Coverage shall be provided by a carrier(s) rated "Excellent" by A.M. Bests.

**Within 14 days following notice of award, the successful bidder shall furnish the City of Asheville with a current Certificate of Insurance with coverages listed above, with the City of Asheville shown as an additional insured.** The certificate shall be an original, no photocopies shall be accepted. The designated certificate holder shall be: City of Asheville, Attn: Risk Management Division, P.O. Box 7148, Asheville, NC 28802. The Certificate of Insurance shall provide that the City be given 30 days advance notice of cancellation, nonrenewal or material change in coverage.

19. **EVALUATION AND SELECTION OF BIDS:** The evaluation of vendor bids shall center on the match between the stated specifications and other requirements included in the final bid request and the vendor's proposal including selection of the lowest responsible bidder. The statutory provisions controlling purchasing by local governments in N. C. (GS 143) includes selection standards for use in making of awards. The provision reads, "All contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract". The City of Asheville reserves the right to accept or reject any or all bids and proposals and further specifically reserves the right to make the award or awards in the best interest of the City of Asheville.
21. **All bids shall be made firm for no less than sixty (60) days.**
22. **DRUG-FREE WORKPLACE:** The City of Asheville is a drug-free workplace employer. The Asheville City Council has also adopted a policy requiring City construction and service contractors to provide a drug-free workplace in the performance of any City contract.
- A. Notifying employees that the unlawful manufacturer, distribution dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken for violations of such violation.
  - B. Establishing a drug-free awareness program to inform about the dangers of drug abuse in the workplace, the contractor's policy of maintaining of drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and penalties that may be imposed upon employees for a drug violation.
  - C. Notifying each employee that as a condition of employment, the employee will abide by the terms of prohibition outlined in (A) above and notify the contractor of any criminal drug statute conviction for a violation occurring in the workplace not later than (5) days after such conviction.
  - D. Notifying the City of Asheville within ten (10) days after receiving from an employee a notice of criminal drug statute conviction or after otherwise receiving actual notice of such conviction.
  - E. Imposing a sanction on or requiring the satisfactory participation in drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime.
  - F. Making a good faith effort to continue to maintain a drug-free workplace for employees. If the prospective vendor is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacturer, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

If the prospective vendor is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacturer, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

By submitting a request for proposal, a prospective primary vendor certifies that it and all sub-vendors will comply with the City of Asheville drug- free workplace requirement. A false certification or the failure to comply with the above drug-free workplace requirements during the performance of contract shall be grounds for suspension, termination, or debarment

23. The City of Asheville has adopted a Minority Business Plan to encourage participation by minority businesses in the award of contracts. Bidders are hereby notified that this bid is subject to the provisions of that Plan. Questions regarding the Minority Business Plan may be directed to the Minority Business Coordinator, at (828) 232-4566 or to the City of Asheville Purchasing Division Office at (828) 259-5950. It is the policy of the City to (1) provide minorities an equal opportunity to participate in all aspects of its contracting and procurement programs and to (2) prohibit any and all discrimination against persons or businesses in pursuit of these opportunities. Minority participation goals for procurement contracts are: 5% African Americans, 2% Hispanic, Asian and Native Americans and 18% for women-owned businesses.
24. **PREPARATION OF FORMS:** All bids must be submitted on the forms provided. Figures should be written in **ink or typewritten**. Any changes on the original bid should be made in ink and initialed by the person signing the proposal. If there are discrepancies between unit prices quoted and extensions, the unit price will prevail.
25. **SUBMISSION OF BIDS:** Bids may be mailed to the CITY OF ASHEVILLE PURCHASING DIVISION, POST OFFICE BOX 7148, ASHEVILLE, NORTH CAROLINA 28802, or may be delivered to the CITY OF ASHEVILLE PURCHASING DIVISION, 3 HUNT HILL PLACE, ASHEVILLE, NORTH CAROLINA 28801. Bids will be received until **3:00 p.m.** on the date set for the bid opening. Please note **FBR 772-10** on the envelope if responding by mail and on the courier envelope.
26. **DUNS Number:** A Dun and Bradstreet number is required of all bidders on this project.
27. **INVOICES AND PAYMENTS:** ALL INVOICES AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER. Rejected materials will be returned to the Vendor at the Vendor's risk and expense. Cash discounts will be deducted as provided herein, or in accordance with the terms of your quotation or bid. DISCOUNT PERIOD WILL DATE FROM RECEIPT OF INVOICE OR RECEIPT OF GOODS, WHICHEVER IS LATER. NET PURCHASES WILL BE PAID 30 DAYS FROM DATE OF YOUR INVOICE. The City is exempt from Federal Excise Tax but is not exempt from State and Local Sales Tax. This tax must be shown as separate items on invoices. ALL INVOICES ARE TO BE SENT TO: CITY OF ASHEVILLE ACCOUNTING DIVISION, P.O. BOX 7148, ASHEVILLE, N.C. 28802.

Exhibit A

**U.S. DEPARTMENT OF ENERGY**

**SPECIAL TERMS AND CONDITIONS – FINANCIAL ASSISTANCE**

**SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY  
AND REINVESTMENT ACT OF 2009**

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

### Special Provisions

#### A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

#### B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

#### C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

## E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

### Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

## F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to: Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.

- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

#### G. Request for Reimbursement

Recipients must provide information with its submission of the SF-270, Request for Advance or Reimbursement, to identify the portion of the request that is associated with Recovery Act projects.

#### H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

#### I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

#### J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

#### K. RESERVED

#### L. RESERVED

## **REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number, <http://www.dnb.com>, is one of the requirements for registration in the Central Contractor Registration.
- (d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

## **RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS**

- (a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-- 102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.
- (b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.
- (c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.



(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

(a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:  
          none          

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

Description	Unit of measure	Quantity	Cost (dollars)*
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Item 1:

Foreign steel, iron, or manufactured good \_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_

Item 2:

Foreign steel, iron, or manufactured good \_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site.]

## **WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts.

Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## **RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS**

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## **DAVIS BACON ACT REQUIREMENTS**

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph

(a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting

Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### Rates of Wages

See Attachment "B", Davis Bacon Wage Determination.

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to this award. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

#### Payrolls and Basic Records

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the article entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost

incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any award work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this article. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the award and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this article and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the award during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the award.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this article.

(4) The falsification of any of the certifications in this article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this article available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension



of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### Withholding of Funds

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this award or any other Federal award with the same Prime Contractor, or any other federally assisted award subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the award. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the award, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### Apprentices and Trainees

#### (a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed--

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this article, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity: The utilization of apprentices, trainees, and journeymen under this article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

## Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this award.

### Subcontracts (Labor Standards)

(a) Definition. "Construction, alteration or repair," as used in this article means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation--

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the article entitled Davis Bacon Act of this award, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the Davis-Bacon Act article, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the Davis Bacon Act article, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled--

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the article is included in this award);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination -- Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the award articles cited in paragraph (b).

(d)(1) Within 14 days after issuance of the award, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the articles set forth in paragraph (b) of this article have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this article, including this paragraph (e) in all subcontracts for construction within the United States.

#### Contract Termination -- Debarment

A breach of the award articles entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the whole award or in part for the Recovery Act covered work only, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

#### Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this award.

#### Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes and Appeals as defined in 10 CFR 600.22. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### Certification of Eligibility

(a) By entering into this award, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this award shall be subcontracted to any person or firm ineligible for award of a Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this award must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the award. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

## Exhibit "B" – Davis Bacon Wage Determination

General Decision Number: NC080016 07/24/2009 NC16

Superseded General Decision Number: NC20070016

State: North Carolina

Construction Type: Building

Counties: Buncombe, Haywood, Henderson, Madison, McDowell,  
Transylvania and Yancey Counties in North Carolina.

BUILDING CONSTRUCTION PROJECTS (does not include residential  
construction consisting of single family homes and apartments  
up to and including 4 stories).

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

\* SUNC1990-010 02/12/1990

	Rates	Fringes
Air conditioning mechanic.....	\$ 7.50	
Boilermaker.....	\$ 16.20	4.105
Bricklayer.....	\$ 7.77	
Carpenter.....	\$ 7.25	
Cement mason/concrete finisher.....	\$ 7.25	
Electrician.....	\$ 8.36	
Glazier.....	\$ 10.00	
Insulator/asbestos worker.....	\$ 8.50	
Ironworker.....	\$ 7.25	
Laborers:		
Asphalt raker.....	\$ 7.25	
General.....	\$ 7.25	
Mason tender.....	\$ 7.25	
Mortar mixer.....	\$ 7.25	
Plasterer tender.....	\$ 7.25	
Painter.....	\$ 8.00	
Plasterer.....	\$ 8.40	.40
Plumber/pipefitter .....	\$ 8.06	
Power equipment operators:		
Backhoe.....	\$ 7.25	
Bulldozer.....	\$ 7.25	
Compactor.....	\$ 7.25	
Crane.....	\$ 9.00	
Grader.....	\$ 7.25	
Loader.....	\$ 7.25	
Lute person.....	\$ 7.25	
Pan/scrapper.....	\$ 7.25	
Paver, distributor, screed.....	\$ 7.25	
Roller.....	\$ 7.25	
Tractor.....	\$ 7.25	
Trenching machine.....	\$ 7.25	
Roofer.....	\$ 7.25	
Sheet metal worker.....	\$ 7.25	
Soft floor layer.....	\$ 9.50	
Sprinkler fitter.....	\$ 7.25	

CITY OF ASHEVILLE  
PURCHASING DIVISION

BID REQUEST NO. FBR 772-10

LIGHTING UPGRADE FOR CITY HALL

THE UNDERSIGNED AFIRMS THAT THE PROPOSAL MADE HERE-IN IS MADE WITHOUT ANY CONNECTIONS WITH ANY OTHER PERSON, OR PERSONS, MAKING ANY OTHER PROPOSAL FOR THE ABOVE ITEM(S): THAT IT IS IN ALL RESPECTS FAIR AND WITHOUT COLUSION OR FRAUD:

THAT \_\_\_\_\_ (FIRM NAME) IS NOT CONNECTED IN ANY OFFICIAL CAPACITY WITH THE CITY OF ASHEVILLE, AND THAT NO PERSON, OR PERSONS, ACTING IN SUCH CAPACITY ARE DIRECTLY, OR INDIRECTLY, INTERESTED HEREIN OR IN ANY OF THE PROFIT ARISING OR ANTICIPATED FROM THIS TRANSACTION.

IN MAKING THIS PROPOSAL, IT IS UNDERSTOOD AND AGREED, THAT THE CONDITIONS SET FORTH IN THE ADVERTISEMENT FOR BIDS, INSTRUCTIONS TO BIDDERS, TERMS AND CONDITIONS AND SPECIFICATIONS TOGETHER WITH THE PROPOSAL SHALL FORM A PART OF AND BE CONSTRUED WITH THE CONTRACT MADE UNDER THE SAME.

THE ACCEPTANCE OF THIS PROPOSAL BY THE CITY OF ASHEVILLE, AS EVIDENCED BY THE ISSUANCE OF A CITY OF ASHEVILLE PURCHASE ORDER, WILL BE HELD TO BE A MUTUAL AGREEMENT AS TO EACH AND EVERY CLAUSE OF THIS PROPOSAL AND TO CONSTITUTE A CONTRACT BETWEEN THE PARTIES HERETO.

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_